

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN THE MATTER OF THE COMPLAINT OF
BRUCE OAKLEY, INC. and JOHNSTON'S PORT 33
INC., OWNERS OF THE M/V LEGACY, FOR
EXONERATION FROM OR LIMITATION OF,
LIABILITY,

Case No. 19-CV-184-Raw

COMPLAINT FOR EXONERATION FROM, OR LIMITATION OF, LIABILITY

COMES NOW Bruce Oakley, Inc., and Johnston's Port 33, Inc. (hereinafter "Petitioners), and for their Complaint for exoneration from, or limitation of, liability allege:

1. This action arises under the laws of the United States providing for limitation of vessel owner's liability (including 46 U.S.C. § 30505 and § 30511) and the various statutes, rules and regulations relating thereto, including Federal Rules of Civil Procedure, Supplemental Admiralty Rule F. This is a cause of admiralty and maritime jurisdiction within the meaning of Rule 9(h). This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1333.

2. Petitioner Johnston's Port 33 Inc. was and is a corporation duly organized and existing under Oklahoma law, a wholly owned subsidiary of Petitioner Bruce Oakley, Inc., and the owner of the M/V LEGACY, Official No. 1278462, within the meaning of 46 U.S.C. § 30505.

3. Petitioner Bruce Oakley, Inc. was and is a corporation duly organized and existing under Arkansas law, and the parent company of Johnston's Port 33 Inc.

4. At material times, the M/V LEGACY was a steel-hulled inland river towboat, Official No. 1278462, used for transportation upon the inland rivers of the United States, including on the Arkansas River and within this Court's jurisdiction.

5. At material times, Petitioner Johnston's Port 33 manned, navigated and operated the M/V LEGACY at its own expense and procurement in fulfillment of 46 U.S.C. §30501.

6. Prior to May 22, 2019, the M/V LEGACY spotted two barges, the LTD-11140 and the MTC-7255, in fleet on the Grand River near the confluence of the Arkansas River, near Muskogee, Oklahoma, and secured those barges to shore with an upstream shore wire and a downstream shore wire.

7. Prior to May 22, 2019, another boat, the M/V DENNIS COLLINS, owned and/or operated by Southern Towing Company, along with two barges in its tow, secured itself to the outboard side of the LTD-11140 and MTC-7255.

8. On or about May 22, 2019, the M/V LEGACY was docked at approximately Mile 393 of the Arkansas River, overseeing barges in its fleets, including fleets on the Grand River.

9. In late May 2019, water levels began to rise on the Arkansas River near Muskogee.

10. On or about May 21, 2019, NOAA forecast severe flooding on the Arkansas River near Muskogee for the following day, May 22, 2019.

11. On May 22, 2019, water levels rose to severe flood levels near Muskogee, rising several feet per day.

12. At approximately noon on May 22, 2019, the LTD-11140 and MTC-7255, with the M/V DENNIS COLLINS and its two tank barges moored alongside, broke from their moorings on the bank of the Grand River.

13. The M/V DENNIS COLLINS apparently attempted to hold all four loaded barges against the current, but then cut the lines securing the now unmoored LTD-11140 and MTC-7255, setting them adrift in the current.

14. After learning that the LTD-11140 and MTC-7255 were adrift, the M/V LEGACY left the dock, caught the barges mid-stream, and pushed the drifting barges against trees along the bank near mile 393 of the Arkansas River, securing those two barges to trees on the riverbank.

15. River levels on the Arkansas River continued to rise on May 22, 2019, and on the evening of May 22, 2019, the LTD-11140 and MTC-7255 pulled the trees from the riverbank, and began drifting again downriver.

16. Sometime during the night of May 22, 2019, or early morning hours of May 23, 2019, barges LTD-11140 and MTC-7255 came to rest on a sandbar upriver of the Webber Falls Lock and Dam.

17. The Corps of Engineers opened the dam gates on May 23, 2019, to lower the river stage upriver of the dam in an attempt to keep those barges on the sandbar, but the current pulled the LTD-11140 and MTC-7255 off the sandbar and toward the dam.

18. Barges LTD-11140 and MTC-7255 struck the Webber Falls Lock and Dam on May 23, 2019, sinking the barges with cargo.

19. The sunken barges will require salvage operations to remove the barges from their position against the upriver side of the Webber Falls Lock and Dam.

20. Bruce Oakley, Inc. received written notice from LMR Freight, LLC of Paducah, Kentucky, for costs incurred from this sinking, apparently as owners of the sunken barges.

21. According to Coast Guard Vessel Documentation Center, barge LTD-11140 is owned by Mizuho America Leasing LLC of New York, New York, and barge MTC-7255 is owned by East West Bank of Alpharetta, Georgia.

22. To Petitioners' knowledge, the cargo of both barges was owned by CGB Enterprises.

23. The aforementioned incident and any damages to the barges, cargo, or any other structures were not caused or contributed to be caused by any fault, neglect, want of care, or design on the part of Petitioners, the M/V LEGACY, or anyone for whom Petitioners may be responsible. Petitioners used due diligence to make the M/V LEGACY seaworthy, and it was, at the time of the incident described herein, tight, staunch and strong, and in all respects seaworthy and fit for the service in which it was engaged.

24. The aforementioned incident and any damages to the barges and cargo and any other structures occurred either as a result of factors for which no one was responsible, or were caused by or were contributed to be caused by the fault and negligence of other persons or entities, or other conditions, for which Petitioners are not responsible.

25. In the event the M/V LEGACY or Petitioners, or either of them, are responsible to any party by reason of the matters set forth herein, said incident and casualty and any losses, damages, injuries, or expenses referred to above were occasioned and occurred without the privity and knowledge of Petitioners, which used due diligence to make the M/V LEGACY seaworthy.

26. Petitioners believe the value of the M/V LEGACY after the incident did not exceed the sum of \$2,000,000. The M/V LEGACY had no pending freight at the time of the

incident. To Petitioners' knowledge, no liens or claims of liens arose on that voyage against the vessel.

27. Petitioners' interest in the M/V LEGACY did not exceed \$2,000,000. Upon information and belief, the claims arising out of the aforementioned incident may exceed Petitioners' interest in the M/V LEGACY.

28. Petitioners claim and seek exoneration from liability, for any loss, damages or injury occasioned or incurred by reason of the aforementioned incident involving the LTD-11140 and MTC-7255, and for any and all claims thereof, and Petitioners allege that they have valid defenses thereto on the facts and on the law.

29. Petitioners further claim the benefit of the Limitation of Vessel Owners' Liability Act provided under Title 46, United States Code, §§ 30501-30512, inclusive, providing for limitation of vessel owners' liability, and of the various statutes, rules and regulations supplemental thereto, and amendatory thereof; and to that end, Petitioners are ready and willing to proceed according to law and pursuant to the rules and practices of this honorable Court.

30. This Complaint is filed within six months of Petitioners' receipt of the first written notice of claim, and is therefore timely filed.

31. All and singular, the premises are true and are exclusively within the Admiralty and Maritime Jurisdiction of the United States and this honorable Court.

WHEREFORE, Petitioners request that:

a. This Court cause due appraisement to be made of the value of Petitioners' interest in the M/V LEGACY;

b. This Court order Petitioners to file a stipulation with security to be approved by the Court for payment into Court of the amount of Petitioners' interest in the M/V LEGACY, whenever the Court shall so order;

c. This Court enter an Order directing the issuance of a notice to all persons claiming damage for any and all loss, damage, expenses, or injuries caused by or resulting from the aforesaid voyage, citing them and each of them to appear and make due proof of their respective claims, and to appear and answer the allegations of this Complaint at or before a time certain to be fixed by said Notice;

d. This Court order that, on the giving of an *ad interim* stipulation as offered by Petitioners, an injunction shall issue restraining the institution and/or prosecution of any and all actions, suits, and legal proceedings of any nature or description, in any jurisdiction, except in the present proceeding, against Petitioners or their agents or representatives, or any other person for whom Petitioners are or may be responsible, or against any of Petitioners' property, including the M/V LEGACY, to recover damages caused by or resulting from said incident or in respect of any claim or claims arising out of or resulting from said incident;

e. This Court in this proceeding adjudge:

i. Petitioners, BRUCE OAKLEY, INC. and JOHNSTON'S PORT 33 INC. and the M/V LEGACY are not liable to any extent for any loss, damage, expense, or injury, nor for any claims whatsoever in any way arising out of or in any consequence of the aforesaid incident, and, therefore, Petitioners and the M/V LEGACY are entitled to a decree of exoneration in this matter;

ii. If Petitioners shall be adjudged liable to any extent in the premises, then such liability be limited to the value of Petitioners' interest in the M/V LEGACY following the incident, and that a decree may be entered discharging Petitioners and the M/V LEGACY from all further liability and further enjoining the filing and prosecution of any claim against Petitioners or their agents or employees, or the M/V LEGACY, with reference to the matter and happenings recited in this Complaint; and

iii. Petitioners have such other and further relief as may be just and proper.

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